

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

Lauritz

32129

**FILE:** B-216917**DATE:** August 29, 1985**MATTER OF:**

Panama Canal Commission Firefighters

**DIGEST:**

Panama Canal firefighters' pay adjustments in 1983 and 1984 were governed by administrative policies adopted under statute that their pay be revised based on the adjustment in District of Columbia firefighters' pay limited by the annual percentage adjustment in General Schedule pay rates. They received a 3.5-percent pay increase on October 2, 1983, based on a 7-percent increase for D.C. firefighters modified in anticipation that the General Schedule rates would be increased 3.5 percent. General Schedule rates were increased by 3.5 percent effective January 1, 1984, but this rate was retroactively increased to 4 percent by legislation. Firefighters may be allowed the increase of 4 percent in lieu of 3.5 percent between January 1984 and April 1984 because the employing agency has adopted a policy of basing adjustments in the pay rates of those employees on revisions in rates of pay for General Schedule employees.

The question presented in this matter is whether firefighters employed by the Panama Canal Commission may receive a retroactive pay increase on the basis of a retroactive increase authorized for rates of pay under the General Schedule by legislation enacted in April 1984.<sup>1/</sup> In the particular circumstances presented, we conclude that the Panama Canal firefighters are eligible for a pay increase for the period from January 1 to April 29, 1984.

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<sup>1/</sup> This action is in response to a request for a decision received from the Administrator of the Panama Canal Commission.

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### Background

Pay rates for Panama Canal employees are governed by section 1215 of the Panama Canal Act of 1979,<sup>2/</sup> codified as 22 U.S.C. § 3655, which generally provides that the employees' rates of basic pay may be established and revised administratively in relation to the corresponding rates of basic pay for the same or similar work performed in the United States. 22 U.S.C. § 3655(b). This provision further authorizes adjustments in the rates of pay of Panama Canal employees based on adjustments in the corresponding rates. These adjustments may not exceed the amount of the adjustment in the corresponding rate and may not be made earlier than the increases in such corresponding rates of pay. 22 U.S.C. § 3655(c).

The Administrator of the Panama Canal Commission reports that under this provision of law a policy has been established that the rates of pay for Commission firefighters will be adjusted on the first day of the fiscal year in relation to the rates of pay fixed for firefighters of the District of Columbia, rather than the pay rates of Federal employees holding General Schedule positions. Nevertheless, beginning in fiscal year 1982 a related policy was adopted of placing an overriding limitation on the percentage of their pay increase to correspond with the pay increase received by employees under the General Schedule.

The Administrator further reports that under these established policies the Commission firefighters received a 3.5-percent pay increase on October 2, 1983, even though firefighters of the District of Columbia received a pay increase of approximately 7 percent at that time.<sup>3/</sup> The Administrator indicates that the 3.5-percent increase received by the Commission firefighters in October 1983 was predicated on an administrative forecast derived from information then available that the annual adjustment of General Schedule pay rates would be limited to 3.5 percent. We note

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<sup>2/</sup> Public Law 96-70, § 1215, approved September 27, 1979, 93 Stat. 452, 465.

<sup>3/</sup> District of Columbia City Council Resolution 5-338, September 20, 1983, 30 D.C. Reg. 5005, 5018 (1983).

that the 3.5-percent limit to be effective January 1, 1984, was contained in the alternate plan submitted to Congress by the President under the authority of 5 U.S.C. § 5305(c).

Under the procedures prescribed by 5 U.S.C. § 5305, basic pay rates for employees holding General Schedule positions were increased by 3.5 percent on January 1, 1984. However, in April 1984 the Congress enacted legislation increasing rates of pay under the General Schedule by 4 percent instead of 3.5 percent, effective January 1, 1984, thus authorizing a retroactive increase in rates for the period between January and April 1984.<sup>4/</sup>

The Commission firefighters received an enhanced pay increase for fiscal year 1984 from 3.5 to 4 percent on the basis of that legislation, but this was applied prospectively only from and after April 29, 1984, because of doubts concerning their eligibility for a retroactive increase. The question presented here is whether they are eligible for a retroactive pay increase predicated on the April 1984 legislation.

#### Analysis and Conclusion

It is well established that when administrative directives are issued rights under those directives become fixed, and although the directives may be amended prospectively by administrative action to increase or decrease rights, in the absence of specific statutory authority they may not be amended retroactively.<sup>5/</sup> Thus, the long-established rule is that administrative changes in salary rates may not be made retroactively without specific authority of law.<sup>6/</sup>

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<sup>4/</sup> See subsection 202(a) of the Omnibus Budget Reconciliation Act of 1983, Public Law 98-270, April 18, 1984, 98 Stat. 157, 158.

<sup>5/</sup> See, generally, James Barber, 63 Comp. Gen. 316, 321 (1984); Station Housing Allowances, 56 Comp. Gen. 1015, 1017 (1977); and decisions there cited. Compare also Friedlander v. United States, 120 Ct. Cl. 4, 12-13 (1951).

<sup>6/</sup> See, generally, Canal Zone Government, 56 Comp. Gen. 900, 903 (1977); and 31 Comp. Gen. 163, 164 (1951).

However, legislative enactments may increase retroactively the pay entitlements of Federal personnel. Moreover, we have expressed the general view that in the case of Federal employees whose pay is fixed administratively, the employing agency may adopt an administrative policy of basing adjustments in the pay rates of those employees on revisions in rates of pay which are fixed by legislation.<sup>7/</sup> Those employees may then become eligible for retroactive pay increases based on legislation affecting the corresponding rates of pay to which their own rates have previously been attached administratively, since in that situation no retroactive administrative action is actually involved.<sup>8/</sup>

In the present case, as indicated, the Panama Canal firefighters' pay adjustments in fiscal year 1984 were governed by administrative policies previously adopted under the authority of 22 U.S.C. § 3655 that their pay be revised on the first day of the fiscal year in relation to changes in the District of Columbia firefighters' pay rates, not to exceed the percentage increase in General Schedule pay rates. It appears that these policies were mandatory and remained in effect throughout the periods at issue here.

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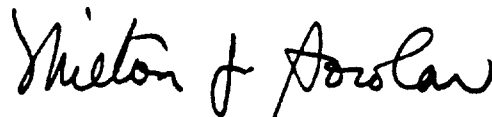
<sup>7/</sup> See 44 Comp. Gen. 89 (1964). Compare also 58 Comp. Gen. 430 (1979).

<sup>8/</sup> See 44 Comp. Gen. 89, supra, at page 90. Of course, the specific wording of provisions of statute authorizing rates of pay to be set administratively for a particular group of employees may preclude their receipt of a retroactive pay increase in such situations, even though a retrospective pay increase is made legislatively in the corresponding rates of pay. For example, under a prior law which has now been superseded by 22 U.S.C. § 3655, the pay of Panama Canal firefighters could be increased retroactively only if their pay rates were equated to rates set by an "Act of Congress," and we held that they were therefore ineligible for a retroactive pay increase corresponding to one authorized legislatively not by Congress but by the District of Columbia Council for District firefighters. See 56 Comp. Gen. 900, supra, at pages 903-905.

Our view is that under these policies it was proper for the firefighters to be allowed a 3.5-percent pay increase on October 2, 1983, since a 7-percent increase was received by D.C. firefighters in October 1983 and since there was authority to modify that increase based on the alternate plan submitted by the President regarding General Schedule increases. Under the two-step procedure adopted this rate of pay for firefighters is first considered in relation to District of Columbia firefighter salaries, and second in relation to any general limitation on General Schedule salaries. In view of the different effective dates applicable to pay rates under the two systems due to the delay factor incorporated in the President's alternative plan, the action taken to grant a pay rate on the effective date of the D.C. firefighters' increase was appropriate, and the limitation on that increase in accordance with the President's alternative plan was also appropriate under the Commission policies.

However, it is our view that the mandatory policies adopted with respect to the Panama Canal firefighters required that conforming revisions be made in their rates of pay effective simultaneously on the date of any adjustment actually made under law in the General Schedule rates of pay. Since January 1, 1984, was made the effective date of the 4-percent upward adjustment in General Schedule pay rates under the April 1984 legislation, the firefighters' pay rates were subject to that adjustment on the same effective date.<sup>9/</sup> Hence, we conclude that the firefighters may be given an upward retroactive pay adjustment predicated on a rate increase from 3.5 to 4 percent effective January 1, 1984.

The question presented is answered accordingly.



Acting Comptroller General  
of the United States

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<sup>9/</sup> Compare 44 Comp. Gen. 89, supra, at page 90.